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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,092	05/10/2007	Paul Oreste Gioia	60838.000610	4356

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HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006-1109

EXAMINER

SOROSH, ALI

ART UNIT	PAPER NUMBER
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1616

MAIL DATE	DELIVERY MODE
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01/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/588,092	Applicant(s) GIOIA, PAUL ORESTE	
	Examiner Ali Soroush	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the Claims

Claims 1-14 were cancelled and claims 15-30 have been newly added by a preliminary amendment filed on 07/28/2006.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15, 16, 19, 21, 22, 23, 26, 28, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Aven (European Patent Application EP 1025757 A1, Published 08/09/2000).

Aven teaches "Crop protection emulsifiable concentrate containing defoaming agents" (See title). "Emulsifiable concentrate (EC) formulations conventionally contain an active ingredient, one or more surfactants which act as emulsifiers upon dilution of the EC with water, and a water immiscible solvent. Typical solvents for conventional EC formulations are aromatic hydrocarbons such as xylene, Shellsol A or Solvesso 200." (See page 2, paragraph 0001). "The relative amount of solid active ingredient soluble in EC increases by about 40 to 60% when 10 to 15% cosolvent is incorporated into the formulation." (See page 8, paragraph 0062). "It has surprisingly been found that the stable EC formulations containing at least one pesticidal crop protection active compound, at least one non polar organic solvent, optionally one polar aprotic

cosolvent, an emulsifiable surfactant system, and at least one defoaming and foam breaking agent ... show clearly reduced foaming behavior upon dilution with water." (See page 3, paragraph 0015). "Preferably, the pesticide is selected from the group consisting of herbicides, insecticides, fungicides, bactericides, nematocides, algicides, molluscicides, virucides, compounds inducing resistance into plants, biological control agents such as viruses, bacteria, nematodes, fungi and other microorganisms, repellents of birds and animals, and plant growth regulators, or mixtures thereof." (See page 3, paragraph 0018). "Preferred herbicides are the compounds selected from the group consisting of:" pendimethalin and trifluralin. (See page 4, paragraphs 0027 and 0028). "The suitable organic solvents in which the pesticide is dissolved are, as a rule, water-immiscible solvents. They are preferably selected from the group consisting of aromatic hydrocarbons, aliphatic hydrocarbons, carboxylic acid esters, alcohols, dialkylene glycol mono- or dialkyl ethers and esters of plant oils or mixtures thereof." (See page 5, paragraph 0034). "The water-miscible aprotic solvents used as cosolvents are useful to increase the amount of active ingredient and adjuvant in the EC." (See page 3, paragraph 0038). "In another preferred embodiment of the invention the cosolvent consists essentially of one or more, preferably two or three dimethyl dicarboxylates of formula $\text{H}_3\text{CO}-\text{CO}-(\text{CH}_2)_n-\text{CO}-\text{OCH}_3$ wherein n is 2, 3, or 4. A particularly preferred cosolvent is a mixture consisting of glutaric acid dimethyl ester, succinic acid dimethyl ester, and adipic acid dimethyl ester, most preferred DBE ..." (See page 3, paragraph 0039 and 0040). "The emulsifying surfactant system enabling the EC to form an oil-in-water emulsion when the formulation is added to water is a

mixture of two or more surfactants, at least one of which is an anionic surfactant (a) and at least one of which is a nonionic surfactant (b). (See page 5, paragraph 0041). "Most preferred anionic surfactants are the sodium, calcium or triethyl ammonium salts of dodecyl benzene sulfonic acid ..." (See page 6, paragraph 0042). "Examples of non-ionic surfactants are nonylphenol polyethoxy ethanols, castor oil polyglycol ethers, polyadducts of ethylene oxide and propylene oxide, tributyl phenoxy polyethoxy ethanol, octyl phenoxy polyethoxy ethanol and tristyrilphenol ethoxylates ... Preferred are ethoxylated fatty acids such as castor or canola oil ethoxylates ... such as ...

UKanil®2507(castor oil ethoxylate) ..." (See page 6, paragraphs 0043 and 0044).

"Preferred embodiments of the invention are as follows: (i) An EC containing – 10 to 900 g/L, in particular, 100 to 850 g/L of at least one pesticidal crop protection active compound, - 50 to 800 g/L, in particular, 100 to 300 g/L of at least one non-polar organic solvent, -0 to 400 g/L, in particular, 0 to 250 g/L of at least one polar aprotic cosolvent, - 20 to 500 g/L, in particular, 40 to 450 g/L of the emulsifying surfactant system, and -0.1 to 20 g/L, in particular 0.2 to 10 g/L of at least one defoaming or foam breaking agent ..." (See page 7, paragraph 0058). In preferred example an EC formulation is prepared containing: 240 g/L Pendimethalin, 50 g/L Phenylsulfonat CA100, 50 g/L Ukanil 2507, 264 g/L Synperonic 91-6, 198 g/L DBE, 1 g/L Fluowet PP, and to 1L Agsol EX12. (See page 14, example 10). Phenylsulfant CA 100 is a mixture of calcium salt of branched dodecyl benzene sulfonate, Genopol X-060, and Solvesso 200. (See page 9, paragraph 0069). For the foregoing reasons the instant emulsifiable concentrate is anticipated.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Applicant Claims
2. Determining the scope and contents of the prior art.
3. Ascertaining the differences between the prior art and the claims at issue; and resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 20, 24, 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aven (European Patent Application EP 1025757 A1, Published 08/09/2000).

Applicant Claims

Applicant claims an emulsifiable concentrate comprising an active ingredient being a dinitroaniline compound, emulsifier or emulsifier mixture, a solvent, and a cosolvent having the following formula $R_1O-CO-(CH_2)_n-CO-OR_2$.

Determination of the Scope and Content of the Prior Art (MPEP §2141.01)

The teachings of Aven is disclosed above.

***Ascertainment of the Difference Between Scope the Prior Art and the Claims
(MPEP §2141.012)***

Aven does not anticipate the instant concentrations (claim 20) of the emulsifiable concentrate. Aven also does not anticipate the instant non-ionic surfactants ethylene oxide/propylene oxide block polymer and/or ethoxylated and/or propoxylated di- or tri-styrylphenols. However, Aven does make such concentrations and non-ionic surfactants obvious.

***Finding of Prima Facie Obviousness Rational and Motivation
(MPEP §2142-2143)***

It would have been obvious to one of ordinary skill in the art to substitute polyadducts of ethylene oxide and propylene oxide and/or tristyrylphenol ethoxylates non-ionic surfactants for UKanil®2507(castor oil ethoxylate) in example 10 as taught by Aven. One would have been motivated to do so because Aven teaches these to be obvious variants of one another. With regard to the instantly claimed concentrations of active ingredient and diester co-solvent would have been obvious because Aven teaches 100 to 850 g/L of at least one pesticidal crop protection active compound which makes the instant active ingredient concentration obvious and teaches 0 to 250 g/L of at least one polar aprotic cosolvent which makes the instant co-solvent concentration obvious. One would be motivated to adjust the concentration of the active ingredient and cosolvent through routine experimentation for optimization of the emulsifiable concentrate. With regard to the amount of water added to the EC one would be

motivated to adjust the amount of water through routine experimentation for optimization of the emulsifiable concentrate. Therefore, the instant emulsifiable concentrate would have been obvious to one of ordinary skill in the art at the time of the instant invention.

2. Claims 17, 18 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aven (European Patent Application EP 1025757 A1, Published 08/09/2000) in view of Hei et al. (US Patent 6593283 B2, Published 07/15/2003) as evidenced by Sealed Air (MSDS Instapak Port Cleaner, Rev. 006, 03/1005).

Applicant Claims

Applicant claims an emulsifiable concentrate comprising an active ingredient being a dinitroaniline compound, emulsifier or emulsifier mixture, a solvent, and a cosolvent having the following formula $R_1O-CO-(CH_2)_n-CO-OR_2$.

Determination of the Scope and Content of the Prior Art (MPEP §2141.01)

The teachings of Aven is disclosed above.

Ascertainment of the Difference Between Scope the Prior Art and the Claims (MPEP §2141.012)

Aven does not teach the co-solvent being a diisobutyl adipate or a mixture of diisobutyl adipate, diisobutyl glutarate, and diisobutyl succinate. This deficiency is cured by the teachings of Hei et al.

Hei et al. teaches an antimicrobial composition comprising a diluting solvent (water), an antimicrobially-active solvent, an optional cosolvent, surfactant, or additional

antimicrobial surfactant. (See abstract). The preferred solvents include dibasic esters such as DBE and DBE-IB. (See column 7, Lines 1-27). The composition is suitable for application to growing or harvested plant material including leaves, stems, tubers, roots, seeds, and the like. (See column 12, Lines 13-15).

Sealed Air teaches that DBE-IB is composition comprising 55-70% Diisobutyl glutarate, 20-30% Diisobutyl succinate, and 10-20% Diisobutyl adipate. (See page 1, Section 2).

***Finding of Prima Facie Obviousness Rational and Motivation
(MPEP §2142-2143)***

It would have been obvious to one of ordinary skill in the art to combine the teachings of Aven with Hei et al. One would have been motivated to do so because Hei et al. teaches that a composition useful for plant protection wherein the solvents DBE and DBE-IB are suitable alternatives for each other. Therefore, the instant emulsifiable concentrate would have been obvious to one of ordinary skill in the art at the time of the instant invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ali Soroush whose telephone number is (571) 272-9925. The examiner can normally be reached on Monday through Thursday 8:30am to 5:00pm E.S.T.

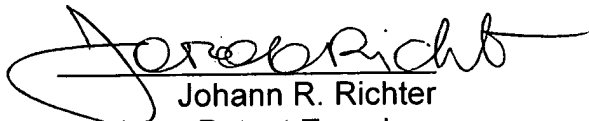
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number For the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ali Soroush
Patent Examiner
Art Unit: 1616


Johann R. Richter
Supervisory Patent Examiner
Technology Center 1600

Lindenhoutseweg 45, 6545 AH Nijmegen, The Netherlands, Tel. +31 (0)24 3710111

1. IDENTIFICATION OF THE PREPARATION AND OF THE COMPANY

Trade name : Instapak® Port Cleaner
 Use of preparation : Pressurized cleaning solvent for use in Instapak® foam dispensing equipment
 Company : Sealed Air Limited, Telford Way, Kettering, Northants NN16 8UN
 England, Telephone: 01536 315700, Fax: 01536 410576
 Emergency tel. no. : 01536 315734

2. COMPOSITION/INFORMATION ON INGREDIENTS

Composition : Diisobutyl DBE (DBE-IB)

Components	Einecs-nr.	CAS-nr.	Weight %	R-phrases
Diisobutyl glutarate	275-257-7	71195-64-7	55 - 70	n.a.
Diisobutyl succinate	213-113-7	925-06-4	20 - 30	n.a.
Diisobutyl adipate	205-450-3	141-04-8	10 - 20	n.a.
Carbondioxide	204-696-9	124-38-9	3	n.a.

3. HAZARDS IDENTIFICATION

May cause skin and eye irritation in susceptible persons.

Specific hazards : none known.

4. FIRST-AID MEASURES

General advice : Never give anything by mouth to an unconscious person.
 Inhalation : Move to fresh air. Oxygen or artificial respiration if needed. Consult a physician after significant exposure.
 Eye contact : Rinse thoroughly with plenty of water for at least 15 minutes and consult a physician,
 Skin contact : Wash off immediately with plenty of water. Take off all contaminated clothing immediately.
 Ingestion : Do not induce vomiting without medical advice. Immediately give plenty of water (if possible charcoal slurry or other liquid (except alcohol). Consult a physician.

5. FIRE-FIGHTING MEASURES

Extinguishing media : CO₂, chemical foam, dry powder (BCF) or water spray.
 Fire fighting protective equipment : Suitable respiratory protection with positive air supply. Full protective clothing should also be worn.

This information is furnished without warranty, expressed or implied, except that it is accurate to the best of our knowledge. The data on this sheet relates only to the specific materials designated herein. Sealed Air assumes no legal responsibility for use or reliance upon these data.

Lindenhoutseweg 45, 6545 AH Nijmegen, The Netherlands, Tel. +31 (0)24 3710111

6.**SPILL OR LEAK PROCEDURES**

Wear suitable protective equipment. Remove all sources of ignition. Ensure adequate ventilation. Prevent contamination of sewers, drains and surface water. Absorb spillage onto sand, earth or any suitable oil absorbent material. Transfer to a container for disposal. Wash the spillage area clean with water. Disposal of this preparation should be in accordance with local, state or national legislation. Incinerate under approved controlled conditions.

7.**HANDLING AND STORAGE DATA**

Handling	:	Use only in area provided with appropriate ventilation. Avoid contact with skin and eyes. Keep away from heat and sources of ignition. Aerosol: do not breathe vapours or spray mist. Do not spray on a naked flame or any other incandescent material.
Storage	:	Keep tightly closed in a dry, cool and well-ventilated place.
Specific use information	:	For additional information please refer to the recommendations for the safe use and handling of Instapak® products. Available from the supplier.

8.**EXPOSURE CONTROLS/PERSONAL PROTECTION**

Engineering measures	:	Ensure adequate ventilation, especially in confined areas.
Respiratory protection	:	In case of insufficient ventilation wear suitable respiratory equipment.
Eye protection	:	Goggles or safety glasses with side shields and/or face shield.
Hand protection	:	Chemical resistant butyl rubber, nitrile rubber or PVC gloves.
Hygiene measures	:	Remove and wash contaminated clothing before re-use. Wash hands before breaks and immediately after handling the product.
Other	:	Eyewash station should be available. See the recommendations for the safe use and handling of Instapak® products before operating equipment.

9.**PHYSICAL AND CHEMICAL PROPERTIES**

Form	:	Liquid	Boiling point	:	275°C
Colour	:	Colourless	Vapour pressure	:	<0,13 hPa at 20°C
Odour	:	Sweet	Solubility in water	:	<0.1 g/l at 25°C
Melting point	:	<-55°C	Flash Point	:	>100°C (Tcc)
Autoignition temperature	:	>370°C	Explosive properties	:	not explosive
			Decomposition temperature	:	350°C

10.**STABILITY AND REACTIVITY**

Stability	:	Stable under normal conditions.
Conditions to avoid	:	Heat and open flames.
Incompatible materials	:	Strong acids, strong alkalis and bases.

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Hazardous decomposition products : Under fire conditions: carbon monoxide.

11. TOXICOLOGICAL INFORMATION

LD50/oral/rat : 16426 mg/kg.
LC50/inhalation/4h/rat : 31.9 mg/L.
Sensitization : Did not cause sensitization on laboratory animals.
Chronic toxicity : Did not show mutagenic or teratogenic effects in animal experiments.

12. ECOLOGICAL INFORMATION

Ecotoxicological tests : No data available.

13. WASTE DISPOSALLiquid waste:

Can be incinerated in accordance with local, state or national legislation.

Empty containers:

If recycling is not practicable, dispose of in compliance with local regulations.

14. TRANSPORT INFORMATION

UN-Number : 1950 (aerosol).
ADR/RID : Class 2, number 5F.
Proper shipping name : Aerosols.

15. REGULATORY INFORMATION

Not classified as a hazardous preparation, according to Directive 67/548 and 1999/45.

16. OTHER INFORMATION

Training : See the recommendations for the safe use and handling of Instapak® products before operating equipment.

This data sheet was prepared in accordance with Directive 2001/58.

Date of issue revision 006 : March 2005
Supersedes revision 005 : July 2002

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Components	Einecs-nr.	CAS-nr.	Weight %	R-phrases
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Extinguishing media : CO₂, chemical foam, dry powder (BCF) or water spray.
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6. SPILL OR LEAK PROCEDURES

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7. HANDLING AND STORAGE DATA

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- Storage : Keep tightly closed in a dry, cool and well-ventilated place.
- Specific use information : For additional information please refer to the recommendations for the safe use and handling of Instapak® products. Available from the supplier.

8. EXPOSURE CONTROLS/PERSONAL PROTECTION

- Engineering measures : Ensure adequate ventilation, especially in confined areas.
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- Eye protection : Goggles or safety glasses with side shields and/or face shield.
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- Hygiene measures : Remove and wash contaminated clothing before re-use. Wash hands before breaks and immediately after handling the product.
- Other : Eyewash station should be available. See the recommendations for the safe use and handling of Instapak® products before operating equipment.

9. PHYSICAL AND CHEMICAL PROPERTIES

- | | | | |
|--------------------------|--------------|---------------------------|---------------------|
| Form | : Liquid | Boiling point | : 275°C |
| Colour | : Colourless | Vapour pressure | : <0,13 hPA at 20°C |
| Odour | : Sweet | Solubility in water | : <0.1 g/l at 25°C |
| Melting point | : <-55°C | Flash Point | : >100°C (Tcc) |
| Autoignition temperature | : >370°C | Explosive properties | : not explosive |
| | | Decomposition temperature | : 350°C |

10. STABILITY AND REACTIVITY

- Stability : Stable under normal conditions.
- Conditions to avoid : Heat and open flames.
- Incompatible materials : Strong acids, strong alkalis and bases.

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